



Leading the payments industry through rulemaking, dialogue, advocacy and education

February 21, 2017

Via Electronic Submission

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Docket No. OP-1557

Dear Mr. Frierson:

NACHA – The Electronic Payments Association (“NACHA”) welcomes the opportunity to provide comments on the proposed guidelines for evaluating joint account requests (the “Proposed Guidelines”) published by the Board of Governors of the Federal Reserve System (“Board”) on Dec. 22, 2016. After first providing background on NACHA, we offer brief comments on the Proposed Guidelines.

I. Background: The ACH Network – Who We Are

NACHA manages the development, administration, and governance of the ACH Network, the backbone for the electronic movement of money and remittance information. The ACH Network serves as a safe, secure, reliable network for direct consumer, business, and government payments, and annually facilitates billions of payments. The ACH Network is governed by the *NACHA Operating Rules* (“NACHA Rules”), which are developed and maintained by NACHA. In its role as the standards organization for payments through the ACH Network and author of the NACHA Rules, NACHA represents and brings together over 11,000 participating financial institutions of all sizes and types throughout the United States, both directly and through 11 Regional Payments Associations. NACHA also brings together nearly 400 other companies and organizations through its industry membership programs. Through these forums, NACHA brings together payments system stakeholders to enable innovation that strengthens the industry with creative payment solutions.

The NACHA Rules are amended through a deliberative and inclusive process similar to that used by Federal agencies under the Administrative Procedures Act. This allows participants in the ACH Network – commercial banks, community banks, credit unions, large corporations, small businesses, consumer advocates, industry vendors and governmental entities – the opportunity to comment on proposed rule changes. Additionally, the Rules and Operations Committee, which has the responsibility to evaluate and create proposed rules changes, includes the participation of diverse organizations. Through this inclusive process, NACHA is able to maintain a fair and equitable set of rules that create

certainty for all parties using the ACH Network. The NACHA Rules work in concert with applicable laws and regulations to provide a legal and business foundation for the use of ACH payments. From this foundation, the NACHA Rules promote innovation and efficiency, and provide certainty regarding ACH payments.

II. Comments on the Proposed Guidelines

NACHA believes that the six Proposed Guidelines identify appropriate factors that should be considered when the Board evaluates a request for a joint account to facilitate settlement for a payment system. NACHA would like, however, to highlight two areas of significance that may warrant some additional attention in any final Guidelines.

A. Impact of a Proposed Joint Account on any Payment System in Which the Joint Account Operates

Proposed Guideline #5 sets forth the following criterion: “Provision of a joint account must not create undue risk to the overall payment system.” 81 Fed. Reg. 93,925 (Dec. 22, 2016). In particular, the Proposed Guideline states, “The private-sector arrangement must not cause undue credit, settlement, or other risk to the efficient operation of other payment systems or the payment system as a whole.” *Id.* NACHA strongly supports this Proposed Guideline. While the other Proposed Guidelines focus on risk management within the private-sector arrangement itself, this Proposed Guideline appropriately highlights the potential for a private-sector arrangement to have an impact on the payment system more broadly.

Established payment systems have evolved over a long period of time, with input from various stakeholders, to establish well-defined roles and responsibilities for operators and participants, to create systems that promote efficiency and safe payment options, to minimize risk (including the risk of disruption), and to allocate risk appropriately among participants. For example, within the ACH system, the ACH Operators perform an essential risk management function as the central bodies with visibility across the range of transactions that are handled by each Operator. NACHA works in conjunction with the Operators to manage this system risk. While there may be risk reduction benefits for participants in a private-sector arrangement arising out of accelerated settlement through a joint account, to the extent that a private sector arrangement supported by a joint account would reduce the effectiveness of other aspects of risk management in the broader payment system, e.g., by reducing the ability of ACH Operators and NACHA to monitor and manage risks, it would be incumbent upon the Board to consider whether the external effects of the private sector arrangement might have unintended effects on the safety and/or integrity of the broader payment system. Furthermore, a joint account arrangement that moves some functions or transactions of a payment system to the participants in a private sector arrangement could result in such functions and transactions being conducted through a “closed system,” reducing the transparency and visibility of such functions or transactions, which otherwise would be visible through regulated payment systems (such as exchanges and clearinghouses). NACHA believes that the Board should consider this potential impact on the broader payment system when evaluating a request for a joint account.

Accordingly, NACHA strongly supports retaining Proposed Guideline #5.

B. Approval of Agent/Operator Designated to Act on Behalf of the Joint Account

The Proposed Guidelines indicate that the designated agent or operator of a private-sector arrangement need not be a depository institution. See 81 Fed. Reg. 93,924, n.11. While other portions of the Proposed Guidelines make tangential references to factors relevant to the qualifications of such a designated agent or operator (*see, e.g.*, Proposed Guideline #2 – supervisory framework for the agent/operator; Proposed Guideline #4 – financial soundness of agents/operator), there is no specific guideline section that provides a complete picture of the qualifications of an agent/operator for this purpose. Indeed, the fact that such an entity would need to be approved by the account-holding Reserve Bank is referenced only in a footnote. *Id.*

The agent or operator of a joint account, however, will play a crucial role in managing and using the joint account, and therefore could have an impact on the payment system in which the joint account operates or even on the broader payment system as a whole. Accordingly, NACHA believes that it is important that there be transparency about the standards that will be applied in approving or disapproving the designated agent or operator. For this reason, NACHA respectfully suggests that the Proposed Guidelines be revised to include separate guidelines that will be used to evaluate whether to approve a designated agent or operator of a joint account, including, among other things, an appropriate risk assessment addressing, among other things, the risks posed to the participants of the payment system in which the joint account will operate, the safety and integrity of such the particular payment system and risks posed to the payment system as a whole, and an assessment of the agent's or operator's compliance with legal requirements and regulatory oversight.

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NACHA appreciates the opportunity to provide comments on the Proposed Guidelines. If you have any questions regarding our comments, please do not hesitate to call me at (703) 561-3927, or our counsel at Sidley Austin LLP in this matter, David E. Teitelbaum, at (202) 736-8683.

Sincerely,



Jane Larimer
EVP ACH Network Administration
General Counsel

cc: David E. Teitelbaum, Esq.